**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANAAT CHANDIGARH**

**...**

**Criminal Revision No.186 of 2005(O&M)**

Decided on : November 11, 2010

**Paramjit @ Parminder Singh @ Nandu**

... Petitioner

VERSUS

**The State of Punjab**

... Respondent

CORAM :
**HON'BLE MR.JUSTICE A.N.JINDAL**

Present: Mr.J.B.S.Gill, Advocate for the petitioner.

Mr.Amit Chaudhary, Assistant Advocate General
for the respondent – State of Punjab.

**A.N.JINDAL, J.-**

Assailed in this petition is the judgment dated 15.12.1994 passed by Additional Sessions Judge (Ad-hoc) – Fast Track Court-II, Hoshiarpur dismissing the appeal of Paramjit Singh – accused/petitioner (herein referred as `petitioner') against the judgment dated 26.10.2002 passed by Sub Divisional Judicial Magistrate, Garhshankar and maintaining the sentence of rigorous imprisonment for three months and a fine of Rs.200/-, under Sections 279 and 338 on each count and rigorous imprisonment for one year and a fine of Rs.200/- under Section 304-A of the Indian Penal Code.

Briefly stated the prosecution version, as unfolded by Sita Rani – complainant is that on 25.10.1998 at about 4.30 PM, she along with her children Daljinder Kumar, Sunil Kumar and Jyoti was coming to village Bharowal on her bullock cart. When they reached near pucca circular road of village Bharowal, the petitioner while driving truck bearing Reg.No.PB-07C-0671 put it in reverse gear to take it back without giving any such warning and without watching the bullock cart going on the road. Consequently, it struck against the bullock cart, as a result of which Sunil Kumar, aged about 5/6 years fell down from the cart and came under the left rear tyre of the truck and died on the spot. Other two children, namely Daljinder Kumar and Jyoti also suffered injuries.

On the aforesaid statement of Sita Rani, the case was registered and investigated. On receipt of the report under Section 173 of the Code of Criminal Procedure, 1973, the petitioner was charged under Sections 279, 338 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Sita Rani – complainant (PW1), Jaswinder Singh (PW2), Baljinder Kumar (PW3), HC Jagdish Chander (PW4), Machhinder Pal (PW5), Dr.Raghbir Singh (PW6) and Ashwani Kumar (PW7).

When examined under Section 313 of the Code of Criminal Procedure, 1973, the petitioner while denying all the incriminating circumstances against him, pleaded his innocence. Ultimately, the trial

resulted into conviction. The appeal preferred by the petitioner also failed.

There are two eye-witnesses in the case; one is the complainant Sita Rani, who while appearing in the witness box as PW1 reiterated the whole version, as spelt out in the FIR. She stated on oath that on 25.10.1998 at about 4.30 PM, she was going on her bullock cart to her agricultural land at village Bharowal along with her sons Sunil Kumar, Daljinder Singh and daughter Jyoti and when they reached near village Bharowal, the offending truck being driven by the petitioner rashly and negligently put it in reverse gear, as a result of which it struck into her bullock cart. Consequently, her son was crushed under the wheel of the truck and died on the spot and other children received injuries. The other witness is Baljinder Kumar (PW3), who being 13 years of age was a competent witness. He has corroborated the testimony of Sita Rani – complainant. He, while giving the registration number of the vehicle, also stated that the accused, present in court, was reversing back the same in a rash and negligent manner and that Sunil Kumar had got crushed under rear left wheel of the said truck. Moreover, the testimony of this witness cannot be doubted, as he had also suffered injuries on the fateful day. Nothing material could be elicited from their statements in order to impeach them despite lengthy cross-examination conducted upon them. Both (PW1 & PW3) have also identified the petitioner in the Court and gave the complete scenario of the occurrence. None of them had any animosity or enmity of any type, whatsoever, so as to implicate the petitioner falsely in this case.

Both the courts below have taken the consistent view that it was the petitioner, who while reversing back the truck rashly and negligently struck against the bullock cart of the complainant. Nothing material could be argued, which may impel this court to differ with the findings of fact, returned by both the courts below.

The powers of interference at this revisional stage are very restricted and could be made only if the impugned judgment was palpably wrong, perverse; ignoring the relevant evidence; taking into consideration irrelevant evidence or the court while holding the trial misconducted the proceedings. It has also been observed by the Apex Court in case **Duli Chand vs. Delhi Administration**, *AIR 1975 SC 1960* that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence. Further, on the issue, it held as under:-

> "Now, it is obvious that the question whether the appellant was guilty of negligence in driving the bus and the death of the deceased was caused on account of his negligent driving in a question of fact which depends for its determination on an appreciation of the evidence. Both the learned Magistrate trying the case at the original stage and the learned Additional Sessions Judge hearing the appeal arrived on an assessment of the evidence, at a concurrent finding of fact that the death of the deceased was caused by negligent driving of the bus by the appellant. The High Court in revisional was exercising

supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct."

Similarly, while discussing the scope of revision, the Apex Court in case **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri**, *AIR 1999 SC 981* held as under:-

"Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the

same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail Bonds furnished stand cancelled. The respondent must surrender to serve the sentence."

Even otherwise, records transpire that the courts below have returned a finding of fact regarding guilt of the petitioner on proper appreciation of the evidence. The impugned judgment also sans any perversity, irregularity or illegality warranting interference by this Court. The conviction recorded by both the courts below is maintained.

Now, coming to the quantum of sentence, the accident in question took place in the year 2002. The petitioner, who was a young man of twenty years at the time of the accident, has suffered a lot of agony due to protracted proceedings for the last about nine years. That apart, no bad antecedents of the petitioner have been brought on record, so as to dub him as habitual offender. Though, in view of the judgment delivered in case **B.Nagabhushanam vs. State of Karnataka**, *2008(3) RCR(Criminal) 50*, the petitioner is not entitled to the benefit of probation, yet the aforesaid facts and circumstances could be treated as mitigating for reduction of sentence. As such, ends of justice would be met, if the sentence of rigorous imprisonment is reduced to ten months under Section 304-A IPC, without altering the sentences for other offences. Ordered accordingly.

Copy of the judgment be sent to the Chief Judicial Magistrate, Hoshiarpur for compliance.

**November 11, 2010** ( A.N.JINDAL )
`gian' JUDGE